

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Christian Family Network, Inc.)	File Number EB-06-DT-277
)	
Former Licensee of AM Station WOLY)	NAL/Acct. No. 200732360001
Battle Creek, Michigan)	
Facility ID #11032)	FRN: 0010140358

FORFEITURE ORDER

Adopted: July 14, 2008

Released: July 17, 2008

By the Acting Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Christian Family Network, Inc. (“Christian Family Network”), former licensee of AM station WOLY, in Battle Creek, Michigan, for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”),¹ by engaging in unauthorized operations of its station after its license expired. In this *Order*, we consider Christian Family Network’s arguments that the forfeiture amount should be cancelled because the violation was not willful and the station’s failure to file a timely renewal application resulted from its inability to file electronically.

II. BACKGROUND

2. Christian Family Network’s license authorizing it to operate station WOLY on frequency 1500 kHz expired on October 1, 2004 because Christian Family Network failed to file a license renewal application, which was due on June 1, 2004. In a letter dated June 13, 2006, the Media Bureau notified Christian Family Network that “...all authority to operate station WOLY(AM), Battle Creek, MI IS TERMINATED and the call letters are deleted. Any operation of this facility is now unauthorized and must cease immediately.”

3. On July 14, 2006, based on information from an area resident that the station continued to operate, agents from the Commission’s Detroit Office monitored transmissions on 1500 kHz in Battle Creek, MI. Using direction finding techniques, the agents determined that the source of the transmissions on 1500 kHz was 15074 6 ½ Mile Road, Battle Creek, MI 49014, which was the previously authorized location for station WOLY’s transmitter.²

¹ 47 U.S.C. § 301.

² The agents also conducted a station inspection on July 14, 2006, and found numerous apparent violations, including inoperable EAS equipment and missing public inspection file items. Because we find that the station has willfully and repeatedly operated without a valid license in violation of Section 301 of the Act, we do not address here the apparent violations with regard to the station’s operations.

4. On August 17, 2006, an agent spoke to the owner and President of Christian Family Network, Inc., James Elsmann. The agent advised Elsmann that the station is unlicensed and therefore is not authorized to operate. Elsmann stated to the agent that he tried to file electronically, but was unable to do so. Elsmann also reported that he spoke to someone at the FCC who advised him that he was required to file his license renewal application electronically. The agent provided Elsmann the telephone number for the FCC's Audio Service Division.

5. On March 2, 2007 and May 22, 2007, an agent from the Commission's Detroit Office monitored 1500 kHz in Battle Creek, MI and, using direction finding techniques, verified that the station continued to operate at 15074 6 ½ Mile Road in Battle Creek. At the time, the agent also confirmed with the Media Bureau that Christian Family Network had not filed a license renewal application.

6. On August 16, 2007, the Detroit Field Office issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of \$10,000 to Christian Family Network for apparently willfully and repeatedly violating Section 301 of the Act by engaging in unauthorized operations of its station after its license expired.³ In its response, Christian Family Network claims that it did not willfully violate Section 301 of the Act and that it could not file its license renewal application because it did not have a computer. It reports that it filed a request for a special temporary authorization ("STA") on December 10, 2006, and that, since that time, it has assumed that the request would be answered by the FCC. Christian Family Network also claims that it does not have the ability to pay the proposed forfeiture.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement").⁶ In examining Christian Family Network's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

8. Christian Family Network does not dispute the fact that it repeatedly operated station WOLY after expiration of its license in violation of Section 301, but claims that it did not willfully violate Section 301 of the Act.⁸ We disagree. Section 312(f)(1) of the Act,⁹ which applies to violations

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732360001 (Enf. Bur., Detroit Office, released August 16, 2007).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ We note that, because we find here that the violation was repeated, we do not need to determine whether the violation was willful. See Section 503(b)(1) of the Act, 47 U.S.C. § 503(b)(1) (violator liable for forfeiture if violation is willful or repeated). We nevertheless address Christian Family Network's claim that the violation was not willful.

⁹ 47 U.S.C. § 312(f)(1).

for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...."¹⁰ "Willful" does not require a finding that there was an intent to engage in a violation.¹¹ Here, agents in the Detroit Office found that Christian Family Network continued to operate station WOLY even after the Media Bureau advised Christian Family Network that the call sign for WOLY was deleted and that Christian Family Network no longer had authority to operate the station. Christian Family Network also was orally warned by an FCC agent during a telephone conversation on August 17, 2006 that operation of the station was unauthorized. We therefore conclude that Christian Family Network's violation of Section 301 was willful because it continued to operate its station even after receiving notice from the Media Bureau that its license had been cancelled and even after receiving an additional warning from an FCC agent.

9. We do not find compelling Christian Family Network's claim that it could not file its license renewal application because electronic filing is mandatory and the station did not have a computer. In its response to the *NAL*, Christian Family Network claims that it is "a poor Christian day-time and cannot afford. . . [a computer]." Christian Family Network goes on to state, however, that it is "very worried and concerned because this is a serious matter involving assets worth more than \$1,000,000." Even if we accept Christian Family Network's claim that it could not afford to have a computer at the station, it had two other options for filing the renewal application. First, to file an application electronically does not require that the station itself have a computer. Internet access exists at many public institutions for a minimal fee. Indeed, when the Commission adopted the mandatory filing requirements, it explained that, "[g]iven the falling costs of computer and modem equipment, and the increasing access to the Internet at public institutions, such as libraries, at minimal cost, we believe that electronic filing will not constitute an undue burden or expense for broadcast licensees and permittees generally."¹² Second, Christian Family Network could have requested a waiver of the mandatory electronic filing requirement. The Commission recognized the possible burdens that the mandatory electronic filing requirement may impose on licensees and indicated when it adopted the requirements that it would "carefully weigh the needs of such licensees in ruling on any waiver request."¹³

10. Christian Family Network also reports that it filed a request on December 10, 2006, seeking a Special Temporary Authorization ("STA") to operate the station. The Media Bureau has no record of receiving such a request. We nevertheless address this issue as if Christian Family Network's request had been received by the Media Bureau. An STA is available only to licensees and permittees.¹⁴ At the time that Christian Family Network allegedly filed its STA request, its license had been expired for more than two years, so it was neither a licensee nor a permittee and therefore was not eligible to receive an STA. Even a licensee or permittee, however, is not permitted to operate under the conditions requested in an STA until such time that the STA is granted by the Commission and, by its own admission, Christian Family Network has never received a response to its alleged STA request.

¹⁰ See *Southern California Broadcasting Co.*, Memorandum and Order, 6 FCC Rcd 4387 (1991).

¹¹ *Id.*, citing *MCI Telecommunications Group*, Order and Notice of Apparent Liability, 3 FCC Rcd 509, 514 n.22 (1988); *Hale Broadcasting Corporation*, Memorandum Opinion and Order, 79 FCC Rcd 169, 171 (1980).

¹² *1998 Biennial Regulatory Review-Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCCR 23056, 23060 (1998).

¹³ *Id.* at 23061.

¹⁴ Section 73.1635(a) of the Commission's Rules provides that an STA "is the authority granted to a permittee or licensee to permit the operation of a broadcast facility for a limited period at a specified variance from the terms of the station authorization or requirements of the FCC rules applicable to the particular class of station." 47 C.F.R. § 73.1635(a).

Christian Family Network also states in its response to the *NAL* that it “talked with several [FCC] . . . staff people” with regard to the STA. Although Christian Family Network does not disclose or submit any documentation regarding the content of those discussions, we note that the Commission has long held that statements by individual Commission staff members are not binding on the Commission and the Commission has repeatedly warned that parties who rely on staff advice or interpretations do so at their own risk.¹⁵ Thus, even if a staff member advised Christian Family Network that the Commission would consider an STA request, such advice has no bearing on our findings here.¹⁶

11. Christian Family Network reports that it does not have the ability to pay the proposed forfeiture. As noted in the *NAL*, the Commission does not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless such claim is supported by: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.¹⁷ Despite this explicit direction, Christian Family Network has provided no such documentation to support its claim that payment of the forfeiture will be burdensome. We therefore decline to reduce or cancel the proposed forfeiture based on its alleged inability to pay.¹⁸

12. We have examined the response to the *NAL* pursuant to the statutory factors above, and in conjunction with the Forfeiture Policy Statement. As a result of our review, we conclude that Christian Family Network willfully and repeatedly violated Section 301 of the Act and a reduction or cancellation of the proposed forfeiture amount is not warranted.

13. Finally, we note that agents from the Detroit Office have determined that Christian Family Network continues to operate its station as of July 14, 2008, without a license. Christian Family Network's failure to immediately cease operation of the station may result in further monetary fines and other more serious sanctions.¹⁹

¹⁵ See e.g., *Roamer One, Inc. and Certain 220 MHz Non-Nationwide Licensees*, Order, 17 FCC Rcd 3287, n.26 (2002), citing *Applications of Hinton Telephone Company*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11625, 11637(1995) and *AAT Electronics Corp.*, 53 RR 2d 1241, 1225-26 (1983), *aff'd sub nom.*, P & R Temmer v. FCC, 743 F.2d 918, 931 (D.C. Cir. 1984).

¹⁶ Once Christian Family Network's authorization was cancelled and the station's call sign was deleted, Christian Family Network's only recourse would have been to file a petition for reconsideration under Section 405(a) of the Act, 47 U.S.C. § 405(a), which we note does not need to be filed electronically. Christian Family Network does not address why it did not file such a petition. We note, however, that unless such petition had been filed within thirty (30) days of public notice of the cancellation of the station's authorization, the Commission could not have considered the petition because we have no discretion to waive the filing requirements in Section 405(a) of the Act. Thus, the cancellation of Christian Family Network's authorization to operate station WOLY and the cancellation of its call sign has become a final Commission order that is no longer is subject to review.

¹⁷ See *NAL* para. 14; See also *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")*, 12 FCC Rcd 17087, 17106-07 (1997), *recon.* denied, 15 FCC Rcd 3030 (1999).

¹⁸ Christian Family Network also states in its response to the *NAL* that it would need to make any payment of forfeiture in installments. Requests for installment plans should be directed to the Commission's Chief Financial Officer, as directed in paragraph 15 below.

¹⁹ See 47 U.S.C. §§ 401, 501, 503 and 510.

IV. ORDERING CLAUSES

14. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Christian Family Network, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for willfully and repeatedly violating Section 301 of the Act.²⁰

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Christian Family Network, Inc. shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

16. **IT IS FURTHER ORDERED** that Christian Family Network, Inc. **SHALL REPORT**, in writing, within 10 days of the date of this *Order*, the date it ceased operating its station. Such report shall be submitted to Sharon L. Webber, Regional Counsel, Federal Communications Commission, Northeast Region, Enforcement Bureau, One Oxford Valley Office Building, Room 404, 2300 East Lincoln Highway, Langhorne, PA 19047.

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Christian Family Network, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Acting Regional Director, Northeast Region
Enforcement Bureau

²⁰ 47 U.S.C. §§ 503(b), 301; 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²¹ 47 U.S.C. § 504(a).